

105TH CONGRESS
2D SESSION

H. R. 4567

AN ACT

To amend titles XI and XVII of the Social Security Act to revise the per beneficiary and per visit home health payment limits under the medicare program, to improve access to health care services for certain medicare-eligible veterans, to authorize additional exceptions to the imposition of civil money penalties in cases of payments to beneficiaries, and to expand the membership of the Medicare Payment Advisory Commission.

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beneficiaries, and to expand the membership of the Medicare Payment Advisory Commission.

1 *Be it enacted by the Senate and House of Representa-*
 2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
 5 “Medicare Home Health and Veterans Health Care Im-
 6 provement Act of 1998”.

7 (b) **TABLE OF CONTENTS.**—The table of contents of
 8 this Act is as follows:

Sec. 1. Short title; table of contents.

**TITLE I—MEDICARE HOME HEALTH CARE INTERIM PAYMENT
SYSTEM REFINEMENT**

Sec. 101. Increase in per beneficiary limits and per visit payment limits for
payment for home health services.

TITLE II—VETERANS MEDICARE ACCESS IMPROVEMENT

Sec. 201. Improvement in veterans’ access to services.

**TITLE III—AUTHORIZATION OF ADDITIONAL EXCEPTIONS TO
IMPOSITION OF PENALTIES FOR CERTAIN INDUCEMENTS**

Sec. 301. Authorization of additional exceptions to imposition of penalties for
providing inducements to beneficiaries.

**TITLE IV—EXPANSION OF MEMBERSHIP OF THE MEDICARE
PAYMENT ADVISORY COMMISSION**

Sec. 401. Expansion of membership of MedPAC to 17.

TITLE V—REVENUE OFFSET

Sec. 501. Revenue offset.

1 **TITLE I—MEDICARE HOME**
 2 **HEALTH CARE INTERIM PAY-**
 3 **MENT SYSTEM REFINEMENT**

4 **SEC. 101. INCREASE IN PER BENEFICIARY LIMITS AND PER**
 5 **VISIT PAYMENT LIMITS FOR PAYMENT FOR**
 6 **HOME HEALTH SERVICES.**

7 (a) INCREASE IN PER BENEFICIARY LIMITS.—Sec-
 8 tion 1861(v)(1)(L) of the Social Security Act (42 U.S.C.
 9 1395x(v)(1)(L)) is amended—

10 (1) in the first sentence of clause (v), by insert-
 11 ing “subject to clause (viii)(I),” before “the Sec-
 12 retary”;

13 (2) in clause (vi)(I), by inserting “subject to
 14 clauses (viii)(II) and (viii)(III)” after “fiscal year
 15 1994”; and

16 (3) by adding at the end the following new
 17 clause:

18 “(viii)(I) In the case of a provider with a 12-month
 19 cost reporting period ending in fiscal year 1994, if the
 20 limit imposed under clause (v) (determined without regard
 21 to this subclause) for a cost reporting period beginning
 22 during or after fiscal year 1999 is less than the median
 23 described in clause (vi)(I) (but determined as if any ref-
 24 erence in clause (v) to ‘98 percent’ were a reference to
 25 ‘100 percent’), the limit otherwise imposed under clause

1 (v) for such provider and period shall be increased by $\frac{1}{2}$
2 of such difference.

3 “(II) Subject to subclause (IV), for new providers and
4 those providers without a 12-month cost reporting period
5 ending in fiscal year 1994, but for which the first cost
6 reporting period begins before fiscal year 1999, for cost
7 reporting periods beginning during or after fiscal year
8 1999, the per beneficiary limitation described in clause
9 (vi)(I) shall be equal to 50 percent of the median described
10 in such clause plus 50 percent of the sum of 75 percent
11 of such median and 25 percent of 98 percent of the stand-
12 ardized regional average of such costs for the agency’s
13 census division, described in clause (v)(I). However, in no
14 case shall the limitation under this subclause be less than
15 the median described in clause (vi)(I) (determined as if
16 any reference in clause (v) to ‘98 percent’ were a reference
17 to ‘100 percent’).

18 “(III) Subject to subclause (IV), in the case of a new
19 home health agency for which the first cost reporting pe-
20 riod begins during or after fiscal year 1999, the limitation
21 applied under clause (vi)(I) (but only with respect to such
22 provider) shall be equal to 75 percent of the median de-
23 scribed in clause (vi)(I).

24 “(IV) In the case of a new provider or a provider
25 without a 12-month cost reporting period ending in fiscal

1 year 1994, subclause (II) shall apply, instead of subclause
 2 (III), to a home health agency which filed an application
 3 for home health agency provider status under this title be-
 4 fore September 15, 1998, or which was approved as a
 5 branch of its parent agency before such date and becomes
 6 a subunit of the parent agency or a separate agency on
 7 or after such date.

8 “(V) Each of the amounts specified in subclauses (I)
 9 through (III) are such amounts as adjusted under clause
 10 (iii) to reflect variations in wages among different areas.”.

11 (b) REVISION OF PER VISIT LIMITS.—Section
 12 1861(v)(1)(L)(i) of such Act (42 U.S.C.
 13 1395x(v)(1)(L)(i)) is amended—

14 (1) in subclause (III), by striking “or”;

15 (2) in subclause (IV)—

16 (A) by inserting “and before October 1,
 17 1998,” after “October 1, 1997,”; and

18 (B) by striking the period at the end and
 19 inserting “, or”; and

20 (3) by adding at the end the following new sub-
 21 clause:

22 “(V) October 1, 1998, 108 percent of such me-
 23 dian.”.

24 (c) EXCLUSION OF ADDITIONAL PART B COSTS
 25 FROM DETERMINATION OF PART B MONTHLY PRE-

1 MIUM.—Section 1839 of such Act (42 U.S.C. 1395r) is
2 amended—

3 (1) in subsection (a)(3), by inserting “(except
4 as provided in subsection (g))” after “year that”;
5 and

6 (2) by adding at the end the following new sub-
7 section:

8 “(g) In estimating the benefits and administrative
9 costs which will be payable from the Federal Supple-
10 mentary Medical Insurance Trust Fund for a year for pur-
11 poses of determining the monthly premium rate under
12 subsection (a)(3), the Secretary shall exclude an estimate
13 of any benefits and administrative costs attributable to the
14 application of section 1861(v)(1)(L)(viii) or to the estab-
15 lishment under section 1861(v)(1)(L)(i)(V) of a per visit
16 limit at 108 percent of the median (instead of 105 percent
17 of the median), but only to the extent payment for home
18 health services under this title is not being made under
19 section 1895 (relating to prospective payment for home
20 health services).”.

21 (d) REPORTS ON SUMMARY OF RESEARCH CON-
22 DUCTED BY THE SECRETARY ON THE PROSPECTIVE PAY-
23 MENT SYSTEM.—By not later than January 1, 1999, the
24 Secretary of Health and Human Services shall submit to
25 Congress a report on the following matters:

1 (1) RESEARCH.—A description of any research
2 paid for by the Secretary on the development of a
3 prospective payment system for home health services
4 furnished under the medicare care program under
5 title XVIII of the Social Security Act, and a sum-
6 mary of the results of such research.

7 (2) SCHEDULE FOR IMPLEMENTATION OF SYS-
8 TEM.—The Secretary's schedule for the implementa-
9 tion of the prospective payment system for home
10 health services under section 1895 of the Social Se-
11 curity Act (42 U.S.C. 1395fff).

12 (3) ALTERNATIVE TO 15 PERCENT REDUCTION
13 IN LIMITS.—The Secretary's recommendations for
14 one or more alternative means to provide for savings
15 equivalent to the savings estimated to be made by
16 the mandatory 15 percent reduction in payment lim-
17 its for such home health services for fiscal year 2000
18 under section 1895(b)(3)(A) of the Social Security
19 Act (42 U.S.C. 1395fff(b)(3)(A)), or, in the case the
20 Secretary does not establish and implement such
21 prospective payment system, under section 4603(e)
22 of the Balanced Budget Act of 1997.

23 (e) MEDPAC REPORTS.—

24 (1) REVIEW OF SECRETARY'S REPORT.—Not
25 later than 60 days after the date the Secretary of

1 Health and Human Services submits to Congress
2 the report under subsection (d), the Medicare Pay-
3 ment Advisory Commission (established under sec-
4 tion 1805 of the Social Security Act (42 U.S.C.
5 1395b–6)) shall submit to Congress a report describ-
6 ing the Commission’s analysis of the Secretary’s re-
7 port, and shall include the Commission’s rec-
8 ommendations with respect to the matters contained
9 in such report.

10 (2) ANNUAL REPORT.—The Commission shall
11 include in its annual report to Congress for June
12 1999 an analysis of whether changes in law made by
13 the Balanced Budget Act of 1997, as modified by
14 the amendments made by this section, with respect
15 to payments for home health services furnished
16 under the medicare program under title XVIII of the
17 Social Security Act impede access to such services
18 by individuals entitled to benefits under such pro-
19 gram.

20 (f) GAO AUDIT OF RESEARCH EXPENDITURES.—
21 The Comptroller General of the United States shall con-
22 duct an audit of sums obligated or expended by the Health
23 Care Financing Administration for the research described
24 in subsection (d)(1), and of the data, reports, proposals,
25 or other information provided by such research.

1 (g) PROMPT IMPLEMENTATION.—The Secretary of
2 Health and Human Services shall promptly issue (without
3 regard to chapter 8 of title 5, United States Code) such
4 regulations or program memoranda as may be necessary
5 to effect the amendments made by this section for cost
6 reporting periods beginning on or after October 1, 1998.
7 In effecting the amendments made by subsection (a) for
8 cost reporting periods beginning in fiscal year 1999, the
9 “median” referred to in section 1861(v)(1)(L)(vi)(I) of
10 the Social Security Act for such periods shall be the na-
11 tional standardized per beneficiary limitation specified in
12 Table 3C published in the Federal Register on August 11,
13 1998, (63 FR 42926) and the “standardized regional av-
14 erage of such costs” referred to in section
15 1861(v)(1)(L)(v)(I) of such Act for a census division shall
16 be the sum of the labor and nonlabor components of the
17 standardized per-beneficiary limitation for that census di-
18 vision specified in Table 3B published in the Federal Reg-
19 ister on that date (63 FR 42926) (or in Table 3D as so
20 published with respect to Puerto Rico and Guam).

1 **TITLE II—VETERANS MEDICARE**
2 **ACCESS IMPROVEMENT**

3 **SEC. 201. IMPROVEMENT IN VETERANS' ACCESS TO SERV-**
4 **ICES.**

5 (a) IN GENERAL.—Title XVIII of the Social Security
6 Act, as amended by sections 4603, 4801, and 4015(a) of
7 the Balanced Budget Act of 1997, is amended by adding
8 at the end the following:

9 “IMPROVING VETERANS’ ACCESS TO SERVICES

10 “SEC. 1897. (a) DEFINITIONS.—In this section:

11 “(1) ADMINISTERING SECRETARIES.—The term
12 ‘administering Secretaries’ means the Secretary of
13 Health and Human Services and the Secretary of
14 Veterans Affairs acting jointly.

15 “(2) PROGRAM.—The term ‘program’ means
16 the program established under this section with re-
17 spect to category A medicare-eligible veterans.

18 “(3) DEMONSTRATION PROJECT; PROJECT.—
19 The terms ‘demonstration project’ and ‘project’
20 mean the demonstration project carried out under
21 this section with respect to category C medicare-eli-
22 gible veterans.

23 “(4) MEDICARE-ELIGIBLE VETERANS.—

1 “(A) CATEGORY A MEDICARE-ELIGIBLE
2 VETERAN.—The term ‘category A medicare-eli-
3 gible veteran’ means an individual—

4 “(i) who is a veteran (as defined in
5 section 101(2) of title 38, United States
6 Code) and is described in paragraph (1) or
7 (2) of section 1710(a) of title 38, United
8 States Code;

9 “(ii) who is entitled to hospital insur-
10 ance benefits under part A of the medicare
11 program and is enrolled in the supple-
12 mentary medical insurance program under
13 part B of the medicare program; and

14 “(iii) for whom the medical center of
15 the Department of Veterans Affairs that is
16 closest to the individual’s place of resi-
17 dence is geographically remote or inaccess-
18 sible from such place.

19 “(B) CATEGORY C MEDICARE-ELIGIBLE
20 VETERAN.—The term ‘category C medicare-eli-
21 gible veteran’ means an individual who—

22 “(i) is a veteran (as defined in section
23 101(2) of title 38, United States Code)
24 and is described in section 1710(a)(3) of
25 title 38, United States Code; and

1 “(ii) is entitled to hospital insurance
2 benefits under part A of the medicare pro-
3 gram and is enrolled in the supplementary
4 medical insurance program under part B
5 of the medicare program.

6 “(5) MEDICARE HEALTH CARE SERVICES.—The
7 term ‘medicare health care services’ means items or
8 services covered under part A or B of this title.

9 “(6) TRUST FUNDS.—The term ‘trust funds’
10 means the Federal Hospital Insurance Trust Fund
11 established in section 1817 and the Federal Supple-
12 mentary Medical Insurance Trust Fund established
13 in section 1841.

14 “(b) PROGRAM AND DEMONSTRATION PROJECT.—

15 “(1) IN GENERAL.—

16 “(A) ESTABLISHMENT.—The administer-
17 ing Secretaries are authorized to establish—

18 “(i) a program (under an agreement
19 entered into by the administering Secretar-
20 ies) under which the Secretary of Health
21 and Human Services shall reimburse the
22 Secretary of Veterans Affairs, from the
23 trust funds, for medicare health care serv-
24 ices furnished to category A medicare-eli-
25 ble veterans; and

1 “(ii) a demonstration project (under
2 such an agreement) under which the Sec-
3 retary of Health and Human Services shall
4 reimburse the Secretary of Veterans Af-
5 fairs, from the trust funds, for medicare
6 health care services furnished to category
7 C medicare-eligible veterans.

8 “(B) AGREEMENT.—The agreement en-
9 tered into under subparagraph (A) shall include
10 at a minimum—

11 “(i) a description of the benefits to be
12 provided to the participants of the program
13 and the demonstration project established
14 under this section;

15 “(ii) a description of the eligibility
16 rules for participation in the program and
17 demonstration project, including any cost
18 sharing requirements;

19 “(iii) a description of the process for
20 enrolling veterans for participation in the
21 program, which process may, to the extent
22 practicable, be administered in the same or
23 similar manner to the registration process
24 established to implement section 1705 of
25 title 38, United States Code;

1 “(iv) a description of how the pro-
2 gram and the demonstration project will
3 satisfy the requirements under this title;

4 “(v) a description of the sites selected
5 under paragraph (2);

6 “(vi) a description of how reimburse-
7 ment requirements under subsection (g)
8 and maintenance of effort requirements
9 under subsection (h) will be implemented
10 in the program and in the demonstration
11 project;

12 “(vii) a statement that all data of the
13 Department of Veterans Affairs and of the
14 Department of Health and Human Serv-
15 ices that the administering Secretaries de-
16 termine is necessary to conduct independ-
17 ent estimates and audits of the mainte-
18 nance of effort requirement, the annual
19 reconciliation, and related matters required
20 under the program and the demonstration
21 project shall be available to the administer-
22 ing Secretaries;

23 “(viii) a description of any require-
24 ment that the Secretary of Health and

1 Human Services waives pursuant to sub-
2 section (d);

3 “(ix) a requirement that the Secretary
4 of Veterans Affairs undertake and main-
5 tain outreach and marketing activities,
6 consistent with capacity limits under the
7 program, for category A medicare-eligible
8 veterans;

9 “(x) a description of how the admin-
10 istering Secretaries shall conduct the data
11 matching program under subparagraph
12 (F), including the frequency of updates to
13 the comparisons performed under subpara-
14 graph (F)(ii); and

15 “(xi) a statement by the Secretary of
16 Veterans Affairs that the type or amount
17 of health care services furnished under
18 chapter 17 of title 38, United States Code,
19 to veterans who are entitled to benefits
20 under part A or enrolled under part B, or
21 both, shall not be reduced by reason of the
22 program or project.

23 “(C) COST-SHARING UNDER DEMONSTRA-
24 TION PROJECT.—Notwithstanding any provision
25 of title 38, United States Code, in order—

1 “(i) to maintain and broaden access
2 to services,

3 “(ii) to encourage appropriate use of
4 services, and

5 “(iii) to control costs,

6 the Secretary of Veterans Affairs may establish
7 enrollment fees and copayment requirements
8 under the demonstration project under this sec-
9 tion consistent with subsection (d)(1). Such fees
10 and requirements may vary based on income.

11 “(D) HEALTH CARE BENEFITS.—The ad-
12 ministering Secretaries shall prescribe the mini-
13 mum health care benefits to be provided under
14 the program and demonstration project to
15 medicare-eligible veterans enrolled in the pro-
16 gram or project. Those benefits shall include at
17 least all medicare health care services covered
18 under this title.

19 “(E) ESTABLISHMENT OF SERVICE NET-
20 WORKS.—

21 “(i) USE OF VA OUTPATIENT CLIN-
22 ICS.—The Secretary of Veterans Affairs, to
23 the extent practicable, shall use outpatient
24 clinics of the Department of Veterans Af-

1 fairs in providing services under the pro-
2 gram.

3 “(ii) AUTHORITY TO CONTRACT FOR
4 SERVICES.—The Secretary of Veterans Af-
5 fairs may enter into contracts and arrange-
6 ments with entities (such as private practi-
7 tioners, providers of services, preferred
8 provider organizations, and health care
9 plans) for the provision of services for
10 which the Secretary of Health and Human
11 Services is responsible under the program
12 or project under this section and shall take
13 into account the existence of qualified
14 practitioners and providers in the areas in
15 which the program or project is being con-
16 ducted. Under such contracts and arrange-
17 ments, such Secretary of Health and
18 Human Services may require the entities
19 to furnish such information as such Sec-
20 retary may require to carry out this sec-
21 tion.

22 “(F) DATA MATCH.—

23 “(i) ESTABLISHMENT OF DATA
24 MATCHING PROGRAM.—The administering
25 Secretaries shall establish a data matching

1 program under which there is an exchange
2 of information of the Department of Veter-
3 ans Affairs and of the Department of
4 Health and Human Services as is nec-
5 essary to identify veterans who are entitled
6 to benefits under part A or enrolled under
7 part B, or both, in order to carry out this
8 section. The provisions of section 552a of
9 title 5, United States Code, shall apply
10 with respect to such matching program
11 only to the extent the administering Sec-
12 retaries find it feasible and appropriate in
13 carrying out this section in a timely and
14 efficient manner.

15 “(ii) PERFORMANCE OF DATA
16 MATCH.—The administering Secretaries,
17 using the data matching program estab-
18 lished under clause (i), shall perform a
19 comparison in order to identify veterans
20 who are entitled to benefits under part A
21 or enrolled under part B, or both. To the
22 extent such Secretaries deem appropriate
23 to carry out this section, the comparison
24 and identification may distinguish among
25 such veterans by category of veterans, by

1 entitlement to benefits under this title, or
2 by other characteristics.

3 “(iii) DEADLINE FOR FIRST DATA
4 MATCH.—The administering Secretaries
5 shall first perform a comparison under
6 clause (ii) by not later than October 31,
7 1998.

8 “(iv) CERTIFICATION BY INSPECTOR
9 GENERAL.—

10 “(I) IN GENERAL.—The admin-
11 istering Secretaries may not conduct
12 the program unless the Inspector Gen-
13 eral of the Department of Health and
14 Human Services certifies to Congress
15 that the administering Secretaries
16 have established the data matching
17 program under clause (i) and have
18 performed a comparison under clause
19 (ii).

20 “(II) DEADLINE FOR CERTIFI-
21 CATION.—Not later than December
22 15, 1998, the Inspector General of the
23 Department of Health and Human
24 Services shall submit a report to Con-
25 gress containing the certification

1 under subclause (I) or the denial of
2 such certification.

3 “(2) NUMBER OF SITES.—The program and
4 demonstration project shall be conducted in geo-
5 graphic service areas of the Department of Veterans
6 Affairs, designated jointly by the administering Sec-
7 retaries after review of all such areas, as follows:

8 “(A) PROGRAM SITES.—

9 “(i) IN GENERAL.—Except as pro-
10 vided in clause (ii), the program shall be
11 conducted in not more than 3 such areas
12 with respect to category A medicare-eli-
13 ble veterans.

14 “(ii) ADDITIONAL PROGRAM SITES.—
15 Subject to the certification required under
16 subsection (h)(1)(B)(iii), for a year begin-
17 ning on or after January 1, 2003, the pro-
18 gram shall be conducted in such areas as
19 are designated jointly by the administering
20 Secretaries after review of all such areas.

21 “(B) PROJECT SITES.—

22 “(i) IN GENERAL.—The demonstra-
23 tion project shall be conducted in not more
24 than 3 such areas with respect to category
25 C medicare-eligible veterans.

1 “(ii) MANDATORY SITE.—At least one
2 of the areas designated under clause (i)
3 shall encompass the catchment area of a
4 military medical facility which was closed
5 pursuant to either the Defense Base Clo-
6 sure and Realignment Act of 1990 (part A
7 of title XXIX of Public Law 101–510; 10
8 U.S.C. 2687 note) or title II of the De-
9 fense Authorization Amendments and Base
10 Closure and Realignment Act (Public Law
11 100–526; 10 U.S.C. 2687 note).

12 “(3) RESTRICTION.—Funds from the program
13 or demonstration project shall not be used for—

14 “(A) the construction of any treatment fa-
15 cility of the Department of Veterans Affairs; or

16 “(B) the renovation, expansion, or other
17 construction at such a facility.

18 “(4) DURATION.—The administering Secretar-
19 ies shall conduct and implement the program and
20 the demonstration project as follows:

21 “(A) PROGRAM.—

22 “(i) IN GENERAL.—The program shall
23 begin on January 1, 2000, in the sites des-
24 ignated under paragraph (2)(A)(i) and,
25 subject to subsection (h)(1)(B)(iii)(II), for

1 a year beginning on or after January 1,
2 2003, the program may be conducted in
3 such additional sites designated under
4 paragraph (2)(A)(ii).

5 “(ii) LIMITATION ON NUMBER OF
6 VETERANS COVERED UNDER CERTAIN CIR-
7 CUMSTANCES.—If for a year beginning on
8 or after January 1, 2003, the program is
9 conducted only in the sites designated
10 under paragraph (2)(A)(i), medicare health
11 care services may not be provided under
12 the program to a number of category-A
13 medicare-eligible veterans that exceeds the
14 aggregate number of such veterans covered
15 under the program as of December 31,
16 2002.

17 “(B) PROJECT.—The demonstration
18 project shall begin on January 1, 1999, and
19 end on December 31, 2001.

20 “(C) IMPLEMENTATION.—The administer-
21 ing Secretaries may implement the program
22 and demonstration project through the publica-
23 tion of regulations that take effect on an in-
24 terim basis, after notice and pending oppor-
25 tunity for public comment.

1 “(5) REPORTS.—

2 “(A) PROGRAM.—By not later than Sep-
3 tember 1, 1999, the administering Secretaries
4 shall submit a copy of the agreement entered
5 into under paragraph (1) with respect to the
6 program to Congress.

7 “(B) PROJECT.—By not later than No-
8 vember 1, 1998, the administering Secretaries
9 shall submit a copy of the agreement entered
10 into under paragraph (1) with respect to the
11 project to Congress.

12 “(6) REPORT ON MAINTENANCE OF LEVEL OF
13 HEALTH CARE SERVICES.—

14 “(A) IN GENERAL.—The Secretary of Vet-
15 erans Affairs may not implement the program
16 at a site designated under paragraph (2)(A) un-
17 less, by not later than 90 days before the date
18 of the implementation, the Secretary of Veter-
19 ans Affairs submits to Congress and to the
20 Comptroller General of the United States a re-
21 port that contains the information described in
22 subparagraph (B). The Secretary of Veterans
23 Affairs shall periodically update the report
24 under this paragraph as appropriate.

1 “(B) INFORMATION DESCRIBED.—For pur-
2 poses of subparagraph (A), the information de-
3 scribed in this subparagraph is a description of
4 the operation of the program at the site and of
5 the steps to be taken by the Secretary of Veter-
6 ans Affairs to prevent the reduction of the type
7 or amount of health care services furnished
8 under chapter 17 of title 38, United States
9 Code, to veterans who are entitled to benefits
10 under part A or enrolled under part B, or both,
11 within the geographic service area of the De-
12 partment of Veterans Affairs in which the site
13 is located by reason of the program or project.

14 “(c) CREDITING OF PAYMENTS.—A payment received
15 by the Secretary of Veterans Affairs under the program
16 or demonstration project shall be credited to the applicable
17 Department of Veterans Affairs medical care appropria-
18 tion (and within that appropriation). Any such payment
19 received during a fiscal year for services provided during
20 a prior fiscal year may be obligated by the Secretary of
21 Veterans Affairs during the fiscal year during which the
22 payment is received.

23 “(d) APPLICATION OF CERTAIN MEDICARE RE-
24 QUIREMENTS.—

25 “(1) AUTHORITY.—

1 “(A) IN GENERAL.—Except as provided
2 under subparagraph (B), the program and the
3 demonstration project shall meet all require-
4 ments of Medicare+Choice plans under part C
5 and regulations pertaining thereto, and other
6 requirements for receiving medicare payments,
7 except that the prohibition of payments to Fed-
8 eral providers of services under sections 1814(c)
9 and 1835(d), and paragraphs (2) and (3) of
10 section 1862(a) shall not apply.

11 “(B) WAIVER.—Except as provided in
12 paragraph (2), the Secretary of Health and
13 Human Services is authorized to waive any re-
14 quirement described under subparagraph (A),
15 or approve equivalent or alternative ways of
16 meeting such a requirement, but only if such
17 waiver or approval—

18 “(i) reflects the unique status of the
19 Department of Veterans Affairs as an
20 agency of the Federal Government; and

21 “(ii) is necessary to carry out the pro-
22 gram or demonstration project.

23 “(2) BENEFICIARY PROTECTIONS AND OTHER
24 MATTERS.—The program and the demonstration
25 project shall comply with the requirements of part C

1 of this title that relate to beneficiary protections and
2 other matters, including such requirements relating
3 to the following areas, to the extent not inconsistent
4 with subsection (b)(1)(B)(iii):

5 “(A) Enrollment and disenrollment.

6 “(B) Nondiscrimination.

7 “(C) Information provided to beneficiaries.

8 “(D) Cost-sharing limitations.

9 “(E) Appeal and grievance procedures.

10 “(F) Provider participation.

11 “(G) Access to services.

12 “(H) Quality assurance and external re-
13 view.

14 “(I) Advance directives.

15 “(J) Other areas of beneficiary protections
16 that the administering Secretaries determine
17 are applicable to such program or project.

18 “(e) INSPECTOR GENERAL.—Nothing in the agree-
19 ment entered into under subsection (b) shall limit the In-
20 spector General of the Department of Health and Human
21 Services from investigating any matters regarding the ex-
22 penditure of funds under this title for the program and
23 demonstration project, including compliance with the pro-
24 visions of this title and all other relevant laws.

1 “(f) VOLUNTARY PARTICIPATION.—Participation of a
2 category A medicare-eligible veteran in the program or
3 category C medicare-eligible veteran in the demonstration
4 project shall be voluntary.

5 “(g) PAYMENTS BASED ON REGULAR MEDICARE
6 PAYMENT RATES.—

7 “(1) IN GENERAL.—Subject to the succeeding
8 provisions of this subsection, the Secretary of Health
9 and Human Services shall reimburse the Secretary
10 of Veterans Affairs for services provided under the
11 program or demonstration project at a rate equal to
12 95 percent of the amount paid to a
13 Medicare+Choice organization under part C of this
14 title with respect to such an enrollee. In cases in
15 which a payment amount may not otherwise be read-
16 ily computed, the Secretary of Health and Human
17 Services shall establish rules for computing equiva-
18 lent or comparable payment amounts.

19 “(2) EXCLUSION OF CERTAIN AMOUNTS.—In
20 computing the amount of payment under paragraph
21 (1), the following shall be excluded:

22 “(A) SPECIAL PAYMENTS.—Any amount
23 attributable to an adjustment under subpara-
24 graphs (B) and (F) of section 1886(d)(5) and
25 subsection (h) of such section.

1 “(B) PERCENTAGE OF CAPITAL PAY-
 2 MENTS.—An amount determined by the admin-
 3 istering Secretaries for amounts attributable to
 4 payments for capital-related costs under sub-
 5 section (g) of such section.

6 “(3) PERIODIC PAYMENTS FROM MEDICARE
 7 TRUST FUNDS.—Payments under this subsection
 8 shall be made—

9 “(A) on a periodic basis consistent with
 10 the periodicity of payments under this title; and

11 “(B) in appropriate part, as determined by
 12 the Secretary of Health and Human Services,
 13 from the trust funds.

14 “(4) CAP ON REIMBURSEMENT AMOUNTS.—The
 15 aggregate amount to be reimbursed under this sub-
 16 section pursuant to the agreement entered into be-
 17 tween the administering Secretaries under sub-
 18 section (b) is as follows:

19 “(A) PROGRAM.—With respect to category
 20 A medicare-eligible veterans, such aggregate
 21 amount shall not exceed—

22 “(i) for 2000, a total of \$50,000,000;

23 “(ii) for 2001, a total of \$75,000,000;

24 and

1 “(iii) subject to subparagraph (B), for
2 2002 and each succeeding year, a total of
3 \$100,000,000.

4 “(B) EXPANSION OF PROGRAM.—If for a
5 year beginning on or after January 1, 2003, the
6 program is conducted in sites designated under
7 subsection (b)(2)(A)(ii), the limitation under
8 subparagraph (A)(iii) shall not apply to the pro-
9 gram for such a year.

10 “(C) PROJECT.—With respect to category
11 C medicare-eligible veterans, such aggregate
12 amount shall not exceed a total of \$50,000,000
13 for each of calendar years 1999 through 2001.

14 “(h) MAINTENANCE OF EFFORT.—

15 “(1) MONITORING EFFECT OF PROGRAM AND
16 DEMONSTRATION PROJECT ON COSTS TO MEDICARE
17 PROGRAM.—

18 “(A) IN GENERAL.—The administering
19 Secretaries, in consultation with the Comptrol-
20 ler General of the United States, shall closely
21 monitor the expenditures made under this title
22 for category A and C medicare-eligible veterans
23 compared to the expenditures that would have
24 been made for such veterans if the program and
25 demonstration project had not been conducted.

1 The agreement entered into by the administer-
2 ing Secretaries under subsection (b) shall re-
3 quire the Department of Veterans Affairs to
4 maintain overall the level of effort for services
5 covered under this title to such categories of
6 veterans by reference to a base year as deter-
7 mined by the administering Secretaries.

8 “(B) DETERMINATION OF MEASURE OF
9 COSTS OF MEDICARE HEALTH CARE SERV-
10 ICES.—

11 “(i) IMPROVEMENT OF INFORMATION
12 MANAGEMENT SYSTEM.—Not later than
13 October 1, 2001, the Secretary of Veterans
14 Affairs shall improve its information man-
15 agement system such that, for a year be-
16 ginning on or after January 1, 2002, the
17 Secretary of Veterans Affairs is able to
18 identify costs incurred by the Department
19 of Veterans Affairs in providing medicare
20 health care services to medicare-eligible
21 veterans for purposes of meeting the re-
22 quirements with respect to maintenance of
23 effort under an agreement under sub-
24 section (b)(1)(A).

1 “(ii) IDENTIFICATION OF MEDICARE
2 HEALTH CARE SERVICES.—The Secretary
3 of Health and Human Services shall pro-
4 vide such assistance as is necessary for the
5 Secretary of Veterans Affairs to determine
6 which health care services furnished by the
7 Secretary of Veterans Affairs qualify as
8 medicare health care services.

9 “(iii) CERTIFICATION BY HHS INSPEC-
10 TOR GENERAL.—

11 “(I) REQUEST FOR CERTIFI-
12 CATION.—The Secretary of Veterans
13 Affairs may request the Inspector
14 General of the Department of Health
15 and Human Services to make a cer-
16 tification to Congress that the Sec-
17 retary of Veterans Affairs has im-
18 proved its management system under
19 clause (i) such that the Secretary of
20 Veterans Affairs is able to identify the
21 costs described in such clause in a
22 reasonably reliable and accurate man-
23 ner.

24 “(II) REQUIREMENT FOR EXPAN-
25 SION OF PROGRAM.—The program

1 may be conducted in the additional
2 sites under paragraph (2)(A)(ii) and
3 cover such additional category A
4 medicare eligible veterans in such ad-
5 ditional sites only if the Inspector
6 General of the Department of Health
7 and Human Services has made the
8 certification described in subclause
9 (I).

10 “(III) DEADLINE FOR CERTIFI-
11 CATION.—Not later than the date that
12 is the earlier of the date that is 60
13 days after the Secretary of Veterans
14 Affairs requests a certification under
15 subclause (I) or June 1, 2002, the In-
16 spector General of the Department of
17 Health and Human Services shall sub-
18 mit a report to Congress containing
19 the certification under subclause (I)
20 or the denial of such certification.

21 “(C) MAINTENANCE OF LEVEL OF EF-
22 FORT.—

23 “(i) REPORT BY SECRETARY OF VET-
24 ERANS AFFAIRS ON BASIS FOR CALCULA-
25 TION.—Not later than the date that is 60

1 days after the date on which the admin-
2 istering Secretaries enter into an agree-
3 ment under subsection (b)(1)(A), the Sec-
4 retary of Veterans Affairs shall submit a
5 report to Congress and the Comptroller
6 General of the United States explaining
7 the methodology used and basis for cal-
8 culating the level of effort of the Depart-
9 ment of Veterans Affairs under the pro-
10 gram and project.

11 “(ii) REPORT BY COMPTROLLER GEN-
12 ERAL.—Not later than the date that is 180
13 days after the date described in clause (i),
14 the Comptroller General of the United
15 States shall submit to Congress and the
16 administering Secretaries a report setting
17 forth the Comptroller General’s findings,
18 conclusion, and recommendations with re-
19 spect to the report submitted by the Sec-
20 retary of Veterans Affairs under clause (i).

21 “(iii) RESPONSE BY SECRETARY OF
22 VETERANS AFFAIRS.—The Secretary of
23 Veterans Affairs shall submit to Congress
24 not later than 60 days after the date de-
25 scribed in clause (ii) a report setting forth

1 such Secretary’s response to the report
2 submitted by the Comptroller General
3 under clause (ii).

4 “(D) ANNUAL REPORT BY THE COMPTROL-
5 LER GENERAL.—Not later than December 31 of
6 each year during which the program and dem-
7 onstration project is conducted, the Comptroller
8 General of the United States shall submit to
9 the administering Secretaries and to Congress a
10 report on the extent, if any, to which the costs
11 of the Secretary of Health and Human Services
12 under the medicare program under this title in-
13 creased during the preceding fiscal year as a re-
14 sult of the program or demonstration project.

15 “(2) REQUIRED RESPONSE IN CASE OF IN-
16 CREASE IN COSTS.—

17 “(A) IN GENERAL.—If the administering
18 Secretaries find, based on paragraph (1), that
19 the expenditures under the medicare program
20 under this title increased (or are expected to in-
21 crease) during a fiscal year because of the pro-
22 gram or demonstration project, the administer-
23 ing Secretaries shall take such steps as may be
24 needed—

1 “(i) to recoup for the medicare pro-
 2 gram the amount of such increase in ex-
 3 penditures; and

4 “(ii) to prevent any such increase in
 5 the future.

6 “(B) STEPS.—Such steps—

7 “(i) under subparagraph (A)(i) shall
 8 include payment of the amount of such in-
 9 creased expenditures by the Secretary of
 10 Veterans Affairs from the current medical
 11 care appropriation for the Department of
 12 Veterans Affairs to the trust funds; and

13 “(ii) under subparagraph (A)(ii) shall
 14 include lowering the amount of payment
 15 under the program or project under sub-
 16 section (g)(1), and may include, in the case
 17 of the demonstration project, suspending
 18 or terminating the project (in whole or in
 19 part).

20 “(i) EVALUATION AND REPORTS.—

21 “(1) INDEPENDENT EVALUATION BY GAO.—

22 “(A) IN GENERAL.—The Comptroller Gen-
 23 eral of the United States shall conduct an eval-
 24 uation of the program and an evaluation of the
 25 demonstration project, and shall submit annual

1 reports on the program and demonstration
2 project to the administering Secretaries and to
3 Congress.

4 “(B) FIRST REPORT.—The first report for
5 the program or demonstration project under
6 subparagraph (A) shall be submitted not later
7 than 12 months after the date on which the
8 Secretary of Veterans Affairs first provides
9 services under the program or project, respec-
10 tively.

11 “(C) FINAL REPORT ON DEMONSTRATION
12 PROJECT.—A final report shall be submitted
13 with respect to the demonstration project not
14 later than 3½ years after the date of the first
15 report on the project under subparagraph (B).

16 “(D) CONTENTS.—The evaluation and re-
17 ports under this paragraph for the program or
18 demonstration project shall include an assess-
19 ment, based on the agreement entered into
20 under subsection (b), of the following:

21 “(i) Any savings or costs to the medi-
22 care program under this title resulting
23 from the program or project.

24 “(ii) The cost to the Department of
25 Veterans Affairs of providing care to cat-

1 category A medicare-eligible veterans under
2 the program or to category C medicare-eli-
3 gible veterans under the demonstration
4 project, respectively.

5 “(iii) An analysis of how such pro-
6 gram or project affects the overall acces-
7 sibility of medical care through the De-
8 partment of Veterans Affairs, and a de-
9 scription of the unintended effects (if any)
10 upon the patient enrollment system under
11 section 1705 of title 38, United States
12 Code.

13 “(iv) Compliance by the Department
14 of Veterans Affairs with the requirements
15 under this title.

16 “(v) The number of category A medi-
17 care-eligible veterans or category C medi-
18 care-eligible veterans, respectively, opting
19 to participate in the program or project in-
20 stead of receiving health benefits through
21 another health insurance plan (including
22 benefits under this title).

23 “(vi) A list of the health insurance
24 plans and programs that were the primary
25 payers for medicare-eligible veterans dur-

1 ing the year prior to their participation in
2 the program or project, respectively, and
3 the distribution of their previous enroll-
4 ment in such plans and programs.

5 “(vii) Any impact of the program or
6 project, respectively, on private health care
7 providers and beneficiaries under this title
8 that are not enrolled in the program or
9 project.

10 “(viii) An assessment of the access to
11 care and quality of care for medicare-eli-
12 ble veterans under the program or project,
13 respectively.

14 “(ix) An analysis of whether, and in
15 what manner, easier access to medical cen-
16 ters of the Department of Veterans Affairs
17 affects the number of category A medicare-
18 eligible veterans or C medicare-eligible vet-
19 erans, respectively, receiving medicare
20 health care services.

21 “(x) Any impact of the program or
22 project, respectively, on the access to care
23 for category A medicare-eligible veterans
24 or C medicare-eligible veterans, respec-
25 tively, who did not enroll in the program or

1 project and for other individuals entitled to
2 benefits under this title.

3 “(xi) A description of the difficulties
4 (if any) experienced by the Department of
5 Veterans Affairs in managing the program
6 or project, respectively.

7 “(xii) Any additional elements speci-
8 fied in the agreement entered into under
9 subsection (b).

10 “(xiii) Any additional elements that
11 the Comptroller General of the United
12 States determines is appropriate to assess
13 regarding the program or project, respec-
14 tively.

15 “(2) REPORTS BY SECRETARIES ON PROGRAM
16 AND DEMONSTRATION PROJECT WITH RESPECT TO
17 MEDICARE-ELIGIBLE VETERANS.—

18 “(A) DEMONSTRATION PROJECT.—Not
19 later than 6 months after the date of the sub-
20 mission of the final report by the Comptroller
21 General of the United States on the demonstra-
22 tion project under paragraph (1)(C), the admin-
23 istering Secretaries shall submit to Congress a
24 report containing their recommendation as to—

1 “(i) whether there is a cost to the
2 health care program under this title in
3 conducting the demonstration project;

4 “(ii) whether to extend the dem-
5 onstration project or make the project per-
6 manent; and

7 “(iii) whether the terms and condi-
8 tions of the project should otherwise be
9 continued (or modified) with respect to
10 medicare-eligible veterans.

11 “(B) PROGRAM.—Not later than 6 months
12 after the date of the submission of the report
13 by the Comptroller General of the United
14 States on the third year of the operation of the
15 program, the administering Secretaries shall
16 submit to Congress a report containing their
17 recommendation as to—

18 “(i) whether there is a cost to the
19 health care program under this title in
20 conducting the program under this section;

21 “(ii) whether to discontinue the pro-
22 gram with respect to category A medicare-
23 eligible veterans; and

24 “(iii) whether the terms and condi-
25 tions of the program should otherwise be

1 continued (or modified) with respect to
2 medicare-eligible veterans.

3 “(j) APPLICATION OF MEDIGAP PROTECTIONS TO
4 DEMONSTRATION PROJECT ENROLLEES.—(1) Subject to
5 paragraph (2), the provisions of section 1882(s)(3) (other
6 than clauses (i) through (iv) of subparagraph (B)) and
7 1882(s)(4) shall apply to enrollment (and termination of
8 enrollment) in the demonstration project, in the same
9 manner as they apply to enrollment (and termination of
10 enrollment) with a Medicare+Choice organization in a
11 Medicare+Choice plan.

12 “(2) In applying paragraph (1)—

13 “(A) any reference in clause (v) or (vi) of sec-
14 tion 1882(s)(3)(B) to 12 months is deemed a ref-
15 erence to 36 months; and

16 “(B) the notification required under section
17 1882(s)(3)(D) shall be provided in a manner speci-
18 fied by the Secretary of Veterans Affairs.”.

19 (b) REPEAL OF PLAN REQUIREMENT.—Subsection
20 (b) of section 4015 of the Balanced Budget Act of 1997
21 (relating to an implementation plan for Veterans sub-
22 vention) is repealed.

23 (c) REPORT TO CONGRESS ON A METHOD TO IN-
24 CLUDE THE COSTS OF VETERANS AFFAIRS AND MILI-
25 TARY FACILITY SERVICES TO MEDICARE-ELIGIBLE BENE-

1 FICIARIES IN THE CALCULATION OF MEDICARE+CHOICE
2 PAYMENT RATES.—The Secretary of Health and Human
3 Services shall report to the Congress by not later than
4 January 1, 2001, on a method to phase-in the costs of
5 military facility services furnished by the Department of
6 Veterans Affairs or the Department of Defense to medi-
7 care-eligible beneficiaries in the calculation of an area's
8 Medicare+Choice capitation payment. Such report shall
9 include on a county-by- county basis—

10 (1) the actual or estimated cost of such services
11 to medicare-eligible beneficiaries;

12 (2) the change in Medicare+Choice capitation
13 payment rates if such costs are included in the cal-
14 culation of payment rates;

15 (3) one or more proposals for the implementa-
16 tion of payment adjustments to Medicare+Choice
17 plans in counties where the payment rate has been
18 affected due to the failure to calculate the cost of
19 such services to medicare-eligible beneficiaries; and

20 (4) a system to ensure that when a
21 Medicare+Choice enrollee receives covered services
22 through a facility of the Department of Veterans Af-
23 fairs or the Department of Defense there is an ap-
24 propriate payment recovery to the medicare pro-
25 gram.

1 **TITLE III—AUTHORIZATION OF**
 2 **ADDITIONAL EXCEPTIONS TO**
 3 **IMPOSITION OF PENALTIES**
 4 **FOR CERTAIN INDUCEMENTS**

5 **SEC. 301. AUTHORIZATION OF ADDITIONAL EXCEPTIONS TO**
 6 **IMPOSITION OF PENALTIES FOR PROVIDING**
 7 **INDUCEMENTS TO BENEFICIARIES.**

8 (a) IN GENERAL.—Subparagraph (B) of section
 9 1128A(i)(6) of the Social Security Act (42 U.S.C. 1320a–
 10 7a(i)(6)) is amended to read as follows:

11 “(B) any permissible practice described in
 12 any subparagraph of section 1128B(b)(3) or in
 13 regulations issued by the Secretary;”.

14 (b) EXTENSION OF ADVISORY OPINION AUTHOR-
 15 ITY.—Section 1128D(b)(2)(A) of such Act (42 U.S.C.
 16 1320a–7d(b)(2)(A)) is amended by inserting “or section
 17 1128A(i)(6)” after “1128B(b)”.

18 (c) EFFECTIVE DATE.—The amendments made by
 19 this section shall take effect on the date of the enactment
 20 of this Act.

21 (d) INTERIM FINAL RULEMAKING AUTHORITY.—The
 22 Secretary of Health and Human Services may promulgate
 23 regulations that take effect on an interim basis, after no-
 24 tice and pending opportunity for public comment, in order

1 to implement the amendments made by this section in a
2 timely manner.

3 **TITLE IV—EXPANSION OF MEM-**
4 **BERSHIP OF THE MEDICARE**
5 **PAYMENT ADVISORY COMMIS-**
6 **SION**

7 **SEC. 401. EXPANSION OF MEMBERSHIP OF MEDPAC TO 17.**

8 (a) IN GENERAL.—Section 1805(c)(1) of the Social
9 Security Act (42 U.S.C. 1395b–6(c)(1)), as added by sec-
10 tion 4022 of the Balanced Budget Act of 1997, is amend-
11 ed by striking “15” and inserting “17”.

12 (b) INITIAL TERMS OF ADDITIONAL MEMBERS.—

13 (1) IN GENERAL.—For purposes of staggering
14 the initial terms of members of the Medicare Pay-
15 ment Advisory Commission (under section
16 1805(c)(3) of such Act (42 U.S.C. 1395b–6(c)(3)),
17 the initial terms of the two additional members of
18 the Commission provided for by the amendment
19 under subsection (a) are as follows:

20 (A) One member shall be appointed for one
21 year.

22 (B) One member shall be appointed for
23 two years.

24 (2) COMMENCEMENT OF TERMS.—Such terms
25 shall begin on May 1, 1999.

1 **TITLE V—REVENUE OFFSET**

2 **SEC. 501. REVENUE OFFSET.**

3 (a) IN GENERAL.—Subparagraph (B) of section
4 408A(c)(3) of the Internal Revenue Code of 1986 is
5 amended by striking “relates” and all that follows and in-
6 serting “relates, the taxpayer’s adjusted gross income ex-
7 ceeds \$145,000 (\$290,000 in the case of a joint return).”

8 (b) EFFECTIVE DATE.—The amendment made by
9 subsection (a) shall apply to distributions after December
10 31, 1998.

Passed the House of Representatives October 10,
1998.

Attest:

Clerk.